THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

POSSESSORY TITLE 10 OF 2007

BETWEEN:

HUNTLEY JACK

Applicant

V

VENITA GIBSON

Respondent

Appearances:

Mr. A. Williams for the Applicant
Mr. P. Joseph for the Respondent

2007: October 19;
November 16.

JUDGMENT

[1] **MATTHEW J (Ag.)**: On May 3, 2007 the Applicant applied for a possessory title in respect of a portion of land at Rillan Hill containing 11,580 square feet.

[2] He swore to an affidavit on April 27, 2007 in which he said his stepfather acquired land at Rillan Hill from Langley Punnett and in the late 1950's or early 1960's his stepfather gave him the portion of land in question.

[3] He said he moved into the property in 1962 and has lived there continuously to the present day.

[4] Veronica Williams and Wilmoth Johnson, both of Rillan Hill, swore affidavits in support of the Applicant alleging that prior to the death of his parents the Applicant had occupied the property up to the present time.

[5] On May 15, 2007 Venita Gibson entered an appearance alleging that she is the lawful owner of the land described in the application.

[6] On May 29, 2007 Venita Gibson filed her claim to the land. She said by virtue of Deed No. 2345 of 1978 made between Lewis Langley Punnett as Vendor and herself as purchaser she became the owner of Lots 15 and 16 situated at Big Rillan containing approximately 3 acres of land.

[7] She said the Applicant has no title or claim to the land whether by adverse possession or otherwise. She said she received produce from the Applicant who occupies the land and that Applicant had accosted her from time to time requesting that she sell to him the portion of land he occupied.

[8] At the trial both Parties gave evidence and were cross-examined. They called no witnesses. The Respondent tendered her deed 2345 of 1978. She stated that the land was mortgaged with the Canadian Imperial Bank of Commerce and she tendered a deed to this effect dated July 7, 1978.

[9] Deed No. 2345 was executed on June, 1978. The schedules to both deeds are similar and in my judgment the effect is that one month after the Respondent bought the land in 1978 she effected a mortgage on the entire portion of land.

[10] The Respondent stated that the mortgage has not been repaid and this is why she had not sold the portion of land to the Applicant who is her father. She said in evidence: "It would not be a problem selling to him when the land was cleared."

[11] She said in 2005 she objected to the Applicant planting tomatoes on a certain portion of the land. She said the Applicant abused her and said among other things she had "jigger foot." She said she was shocked.

[12] Under cross-examination she admitted that the Respondent had a two-storey wall house on the portion of land he occupied. She said that it was her grandmother and her grandmother's husband, Samuel Williams, who took her to Mr. Punnett to purchase the land. Her grandmother is the Applicant's mother and Mr. Samuel Williams was the Applicant's stepfather.

[13] She admitted that her father was on the land before she got her deed and she said she mortgaged the land but not the Applicant's house.

[14] It is obvious that the deeds referred to above express the legal position no matter what the Respondent or anyone else says by parol evidence, to the contrary.

[15] The Applicant stated that in the 1940's to 1950's Mr. Punnett gave people land to work and when they worked the land they would pay him by installments. He said Samuel Williams had a portion of land of approximately 3 ½ acres from Mr. Punnett but he never finished paying for the land.

[16] He said his stepfather gave him the piece of land. Immediately coming to mind was the latin maxim ***nemo dat quod non habet***. He said he has occupied the land since 1945.

CONCLUSIONS:

[17] I have had so often to say in this Court that mere occupation of land does not amount to adverse possession. Both Counsel endorsed the practice related by the Applicant that in those days it could take up to 50 years before a person was finished paying the large estate owner.

[18] Learned Counsel for the Applicant contends that the Applicant has occupied land for over 45 years, a fact learned Counsel for the Respondent does not dispute. Learned Counsel for the Respondent submitted, quite correctly in my view; that the possession was not exclusive.

[19] In my judgment neither Samuel Williams nor Huntley Jack could adversely possess land belonging to Mr. Punnett while Samuel Williams paid for his occupation of the land. In evidence in chief, as well as under cross examination, Huntley Jack stated that Samuel Williams had not finished paying for the land.

[20] In my judgment the first time that the land passed from the ownership of Mr. Punnett was by deed 2345 of 1978 when Venita Gibson became owner and she has been in control ever since.

[21] Venita Gibson stated that the Applicant "was not very proud when I told him I had title. He said, I am your dad. Would you consider selling me the land?"

[22] Huntley Jack recognized her ownership. She had done what he could not do. There must have been good reason why the Applicant's mother and stepfather did not take him to Mr. Punnett for him to purchase the 3 ½ acres.

[23] Venita Gibson was quite emotional when she related the abuse poured out to her by her father. She needed some time to compose herself during her testimony. I noted she was never cross-examined on that aspect of her testimony. What Counsel for the Applicant did was to exclaim that he too was shocked that a member of his constituency could take her father to Court. But that is irrelevant.

[24] I accept Venita Gibson to be a truthful witness and I believe her absolutely when she says that the Applicant has consistently asked her to sell him the portion of land on which his house is located.

[25] Learned Counsel for the Applicant referred to the Privy Council case of ***Shillingford v Attorney General of Dominica***. But the facts of this case are different to the situation in the Dominica case. Mr. Shillingford was not paying rent to anybody whether for 50 years, one year, or 100 years. He was in exclusive possession. He did not pay peppercorn rent

or gave anybody from the proceeds of the land. He was never asking anybody to sell him the land.

[26] In my judgment the Applicant has not been in exclusive and undisturbed possession of the portion of land for over 12 years as he states in his application. He will have to wait until his daughter decides to sell him the portion after the mortgage with the Canadian Imperial Bank of Commerce has been cleared.

[27] The Applicant is to pay costs to the Respondent in the amount of $2,000.00.

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Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)